erty held by a city for governmental purposes from state taxation, to avoid the inconsistency of the state taxing itself.[1] Accordingly, such instrumentalities of well-recognized governmental functions as city halls and court houses are nowhere taxed. Changed economic conditions, however, have enlarged the domain of municipal enterprise, and the state has seen fit to confer added power upon its municipalities. Parks, aqueducts, wharves, waterworks and lighting plants have become legitimate objects of municipal ownership; and the question arises whether such property is held for governmental purposes within the meaning of the rule of exemption. A distinction has been taken by some courts, and exemption denied to property held by a city merely for the "profit and convenience of its citizens."[2] In applying this limitation, the Court of Appeals of Kentucky lately refused to exempt bonds of a gas company acquired by the city of Frankfort in exchange for its gas plant, although the income from the bonds was used for lighting the streets. *City of Frankfort* v. *Commonwealth*, 82 S. E. Rep. 1008. A previous decision of the same court exempting a public park is distinguished on the ground that the city derived no revenue from its park.[3] It would seem, however, that the profit and convenience of the citizens of a particular community are quite as much the sole objects of a public park as of street lamps. Moreover, the city has constitutional authority to provide for street lighting. It would hardly be urged that taxes directly levied for that purpose are taxable by the commonwealth, and the means of effectuating such an object should be regulated only by the test of reasonableness.

The majority of jurisdictions have taken a broader view, and, therefore, in the absence of special statutes, municipal waterworks and lighting plants, though yielding revenue, are exempt from taxation.[4] The collection of water-rents is generally considered, not a source of private profit, but a mode of taxation.[5] To the extent that a municipality is given enlarged power to acquire and engage in industries directly for the public benefit, it is regarded as invested with so much more governmental power, in the broader meaning of the term.[6] Whatever property it acquires through taxation is exempt;[7] for, obviously, the product of one tax should not be made the subject of another. The power to levy taxes is based on the right of governmental administration and public welfare.[8] Only public purposes justify the levying of a tax, and the same test as to what constitutes public purposes should be applied in exempting property from taxation as in levying taxes for the purpose of acquiring it.

RIGHT OF INSPECTION IN SALES C. O. D. — Under ordinary circumstances, when a vendor sells and ships goods of a specified description, the vendee clearly has the right of inspection before acceptance.[1] If the goods

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[1] 1 Cooley, Taxation, 3d ed., 263 *et seq.*

[2] City of Louisville *v.* Commonwealth, 1 Duv. (Ky.) 295.

[3] *Cf.* City of Owensboro *v.* Commonwealth, 105 Ky. 344; Rochester *v.* Rush, 80 N. Y. 302.

[4] Town of West Hartford *v.* Water Com'r, 44 Conn. 360; State *v.* Toledo, 54 Oh. St. 418; Smith *v.* Mayor of Nashville, 88 Tenn. 464; Sumner County *v.* Wellington, 66 Kan. 590; *contra*, City of Covington *v.* Commonwealth, 19 Ky. Law Rep. 105.

[5] Springfield, etc., Co. *v.* Keeseville, 148 N. Y. 46.

[6] See Town of West Hartford *v.* Water Com'r, *supra*; Rochester *v.* Rush, *supra*.

[7] State *v.* Toledo, *supra*.

[8] See People *v.* Salem, 20 Mich. 452.

[1] Isherwood *v.* Whitmore, 11 M. & W. 347.

are according to order, title passes at the moment of shipment and the purchaser is bound to pay the price.[2] If they do not fulfill the required conditions, the buyer need not accept them and there is no sale.[3] But when goods are shipped C. O. D., do the same rules apply? According to the better opinion, the condition of collection on delivery does not prevent the passing of title, though it denies the vendee the right of possession.[4] As to its effect upon the right of inspection, however, the few authorities are in confusion. On the one hand, it has been held that a carrier incurs no liability to the consignee for refusal to allow inspection.[5] On the other hand, an express company which allowed inspection was held not liable in an action by the vendor.[6] In this case the company had delivered the goods to the consignee upon deposit of the purchase price, and had agreed to return the deposit if the goods proved unsatisfactory. Upon the hypothesis that the vendee had a right of inspection, the court reasoned that the carrier should be protected in permitting a reasonable exercise thereof. The question, however, is squarely raised only in actions between the vendor and the vendee. In a Kentucky case where goods were sent C. O. D. without the consignee's authority for so transmitting them, the court diplomatically left it for the jury to determine whether there was a right of inspection.[7] A recent Michigan case raised the question incidentally, the court taking the position that a valid tender could not be made without such a right. *Thick* v. *Detroit, etc., R. R. Co.*, 101 N. W. Rep. 64.

As this utter lack of harmony prevails among the authorities, it may well be asked, what result should be reached on principle. There is a general rule among express companies not to allow inspection of goods sent C. O. D.; and in cases where this method of shipment is contemplated, the parties might well be taken to have agreed that this rule should form part of the contract.[8] After payments were made and the goods obtained, if they should prove not to be in accordance with the order, the buyer would have the usual remedies for the breach of the implied warranty that the goods conformed to the description. In some jurisdictions, he could sue only for damages; in others, he would be allowed the option of rescission or damages.[9] On principle, he clearly should have this option, since he had no opportunity to inspect.[10] But if the vendee had not authorized the shipment of goods C. O. D., he could not be taken to have contracted with reference to the rule of the carrier, his right of inspection would remain, and such a consignment ought not to constitute a valid tender.

DECLARATIONS OF TESTAMENTARY INTENTION. — As between an ante-testamentary declaration by a testator of his intention to dispose of his property in a certain way, and his post-testamentary declaration of the fact of such disposition, it is obvious that neither is entitled to a higher degree of credibility than the other. Nevertheless, the former was at first admitted in

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[2] Dutton *v.* Solomonson, 3 Bos. & Pul. 582.
[3] Lambden *v.* Hill, 6 Houst. (Del.) 29.
[4] Commonwealth *v.* Fleming, 130 Pa. St. 138.
[5] Wiltse *v.* Barnes, 46 Ia. 210; see Lane *v.* Chadwick, 146 Mass. 68.
[6] Lyons & Co. *v.* Hill & Co., 46 N. H. 49.
[7] Louisville Lithographic Co. *v.* Schedler, 23 Ky. Law Rep. 465.
[8] See Stevenson, Jaques & Co. *v.* McLean, 5 Q. B. D. 346, 349.
[9] Pope *v.* Allis, 115 U. S. 363. [10] See 16 HARV. L. REV. 465 ff.